

AMENDED IN SENATE AUGUST 27, 2007

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JUNE 20, 2007

AMENDED IN ASSEMBLY APRIL 30, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

AMENDED IN ASSEMBLY MARCH 27, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1032

Introduced by Assembly Member Wolk

February 22, 2007

An act to amend Section 5653 of, ~~and to amend, repeal, and add~~ Section 5653.7 of, *and to add and repeal Section 5653.6 of*, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 1032, as amended, Wolk. Dredging: closed waters: native trout: aquatic and amphibian species.

~~Existing~~

(1) *Existing* law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Game. Under existing law, it is unlawful to possess a vacuum or suction dredge in areas, or in or within 100 yards of waters, that are closed to the use of vacuum or suction dredges. *A violation of the permit requirement is a misdemeanor.* The department is authorized to close areas otherwise open for dredging and for which permits have been issued if there is an

unanticipated water level change and the department determines that closure is necessary to protect fish and wildlife resources.

The Trout and Steelhead Conservation and Management Planning Act of 1979 finds and declares that it is the policy of the state to establish and maintain wild trout stocks in suitable waters of the state and establish angling regulations designed to maintain the wild trout fishery in those waters by natural reproduction. The act requires the department to determine whether each stream or lake should be managed as a wild trout fishery, or whether its management should involve the planting of trout. The act states the intent of the Legislature that the Fish and Game Commission maintain a specified wild trout program.

~~Existing law also authorizes the commission to designate “Heritage Trout Waters” to recognize the beauty, diversity, historical significance, and special values of California’s native trout, as defined.~~

The bill, except as specified, would prohibit suction dredge mining on the Klamath, Salmon, and Scott Rivers, and on certain tributaries of those rivers. The bill would also prohibit suction dredge mining in specified thermal refugia, as defined. A person violating one of those prohibitions would be guilty of a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The prohibitions would be repealed on January 1, 2011.

~~This bill, until January 1, 2014 2011, would close designated wild and heritage trout waters stream and river segments and lakes to motorized suction dredging, except as authorized by a site-specific permit approved and issued by the department. The bill would prohibit the department from approving a permit unless it finds that the subject dredging operation will not be deleterious to certain species. The bill would authorize the department to seasonally restrict, limit the size or use of equipment, or close to dredging, an area otherwise opened for dredging and for which a permit has been issued, without regard to water level, if the department determines that it is necessary to protect fish and wildlife resources, including native aquatic, fish, or amphibian species listed by the commission as endangered or threatened under the California Endangered Species Act, or species identified by the department as species of special concern.~~

~~On and after January 1, 2014 2011, the bill would repeal those stream and river segment and lake closures, and would again authorize the department to close areas otherwise open for dredging and for which permits have been issued, if there is an unanticipated water level change~~

and the department determines that closure is necessary to protect fish and wildlife resources.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5653 of the Fish and Game Code is
2 amended to read:

3 5653. (a) The use of any vacuum or suction dredge equipment
4 by any person in any river, stream, or lake of this state is prohibited,
5 except as authorized under a permit issued to that person by the
6 department in compliance with the regulations adopted pursuant
7 to Section 5653.9. Before any person uses any vacuum or suction
8 dredge equipment in any river, stream, or lake of this state, that
9 person shall submit an application for a permit for a vacuum or
10 suction dredge to the department, specifying the type and size of
11 equipment to be used and other information as the department may
12 require.

13 (b) Under the regulations adopted pursuant to Section 5653.9,
14 the department shall designate waters or areas wherein vacuum or
15 suction dredges may be used pursuant to a permit, waters or areas
16 closed to those dredges, the maximum size of those dredges that
17 may be used, and the time of year when those dredges may be
18 used. If the department determines, pursuant to the regulations
19 adopted pursuant to Section 5653.9, that the operation will not be
20 deleterious to fish, it shall issue a permit to the applicant. If any
21 person operates any equipment other than that authorized by the
22 permit or conducts the operation in any waters or area or at any
23 time that is not authorized by the permit, or if any person conducts
24 the operation without securing the permit, that person is guilty of
25 a misdemeanor.

26 (c) The department shall issue a permit upon the payment, in
27 the case of a resident, of a base fee of twenty-five dollars (\$25),

1 as adjusted under Section 713, when an onsite investigation of the
2 project size is not deemed necessary by the department, and a base
3 fee of one hundred thirty dollars (\$130), as adjusted under Section
4 713, when the department deems that an onsite investigation is
5 necessary. In the case of a nonresident, the base fee shall be one
6 hundred dollars (\$100), as adjusted under Section 713, when an
7 onsite investigation is not deemed necessary, and a base fee of two
8 hundred twenty dollars (\$220), as adjusted under Section 713,
9 when an onsite investigation is deemed necessary.

10 (d) It is unlawful to possess a vacuum or suction dredge in areas,
11 or in or within 100 yards of waters, that are closed to the use of
12 vacuum or suction dredges, including, but not limited to, waters
13 closed by the department pursuant to Section 5653.7.

14 *SEC. 2. Section 5653.6 is added to the Fish and Game Code,*
15 *to read:*

16 5653.6. (a) *As used in this section, "thermal refugia" means*
17 *an area within 500 feet up the named tributary from the confluence*
18 *with the main stem and 500 feet upstream and downstream on the*
19 *main stem from the confluence of the tributary with the main stem.*

20 (b) *Notwithstanding any other provision of law, suction dredge*
21 *mining is not permitted in the following areas:*

22 (1) *On the main stem of the Klamath River from its confluence*
23 *with the Trinity River to Iron Gate Dam, except for a period of*
24 *each year commencing July 1 and ending September 1.*

25 (2) *On the following tributaries of the Klamath River at any*
26 *time of the year:*

27 (A) *Indian Creek.*

28 (B) *Elk Creek.*

29 (C) *Dillon Creek.*

30 (D) *Independence Creek.*

31 (E) *Bluff Creek.*

32 (F) *Red Cap Creek.*

33 (G) *Camp Creek.*

34 (H) *Clear Creek.*

35 (3) *On all other Klamath River tributaries, except for a period*
36 *of each year commencing July 1 and ending September 1.*

37 (4) *On the main stem of the Salmon River from its confluence*
38 *with the Klamath River to the Forks of the Salmon River (the*
39 *confluence of the North and South Forks of the Salmon River) at*
40 *any time during the year.*

1 (5) *On the North and South Forks of the Salmon River, except*
2 *for a period of each year commencing July 1 and ending September*
3 *1.*

4 (6) *On the following tributaries of the Salmon River at any time*
5 *of the year:*

6 (A) *Butler Creek.*

7 (B) *East Fork Knownothing Creek.*

8 (C) *Indian Creek.*

9 (D) *Kelly Gulch.*

10 (E) *Knownothing Creek.*

11 (F) *Little North Fork.*

12 (G) *Methodist Creek.*

13 (H) *Negro Creek.*

14 (I) *Nordheimer Creek.*

15 (J) *Specimen Creek.*

16 (7) *On the Scott River from its mouth to headwaters, except for*
17 *a period of each year commencing July 1 and ending September*
18 *1.*

19 (8) *On the following tributaries of the Scott River at any time*
20 *of the year:*

21 (A) *Big Mill Creek (East Fork).*

22 (B) *Boulder Creek (South Forks).*

23 (C) *Canyon Creek.*

24 (D) *Etna Creek.*

25 (E) *French Creek.*

26 (F) *Kangaroo Creek (East Fork).*

27 (G) *Kelsey Creek.*

28 (H) *Kidder Creek.*

29 (I) *McAdam Creek.*

30 (J) *Mill Creek (Scott Bar).*

31 (K) *Mill Creek (also known as Shackleford/Mill Creek).*

32 (L) *Miners Creek.*

33 (M) *Moffett Creek.*

34 (N) *Patterson Creek.*

35 (O) *Shackleford Creek.*

36 (P) *South Fork Scott River.*

37 (Q) *Sugar Creek.*

38 (R) *Tompkins Creek.*

39 (S) *Wildcat Creek.*

40 (T) *Woolriver Creek.*

- 1 (c) Suction dredge mining is not permitted at any time in the
2 following thermal refugia:
- 3 (1) The thermal refugia on all direct tributaries on the Klamath,
4 Salmon, and Scott Rivers that are closed to suction dredge mining
5 for the entire year as listed in subdivision (b).
- 6 (2) The thermal refugia areas at the confluence of the following
7 tributaries with the main stem of the Klamath River:
- 8 (A) Beaver Creek.
9 (B) Bluff Creek.
10 (C) Bogus Creek.
11 (D) Boise Creek.
12 (E) Camp Creek.
13 (F) Clear Creek.
14 (G) Coon Creek.
15 (H) Elk Creek.
16 (I) Grider Creek.
17 (J) Hopkins Creek.
18 (K) Horse Creek.
19 (L) Hunter Creek.
20 (M) Independence Creek.
21 (N) Indian Creek.
22 (O) Irving Creek.
23 (P) Little Grider Creek.
24 (Q) Peach Creek.
25 (R) Pewan Creek.
26 (S) Red Cap Creek.
27 (T) Rogers Creek.
28 (U) Salmon River.
29 (V) Salt Creek.
30 (W) Scott River.
31 (X) Slate Creek.
32 (Y) Swillup Creek.
33 (Z) Thomas Creek.
34 (AA) Ti Creek.
35 (AB) Tom Marten Creek.
36 (AC) Trinity River.
37 (AD) Ukonom Creek.
- 38 (3) The thermal refugia at the confluence of all tributaries on
39 the North Fork of the Salmon River from Eddie Gulch to the Forks
40 of the Salmon (confluence of the North and South Forks of the

1 *Salmon River) and Crapo Creek on the mainstem below the Fork*
2 *of the Salmon.*

3 *(d) Suction dredge mining on any water listed in this section*
4 *during a period established in this section shall be permitted in*
5 *accordance with Section 5653.*

6 *(e) A violation of subdivision (b) or (c) shall be subject to the*
7 *same penalty as that provided for permit violations in subdivision*
8 *(b) of Section 5653.*

9 *(f) This section shall remain in effect only until January 1, 2011,*
10 *and as of that date is repealed, unless a later enacted statute, that*
11 *is enacted before January 1, 2011, deletes or extends that date.*

12 ~~SEC. 2.~~

13 *SEC. 3.* Section 5653.7 of the Fish and Game Code is amended
14 to read:

15 ~~5653.7. (a) Motorized suction dredge mining within Wild and~~
16 ~~Heritage Trout waters designated pursuant to Section 1726.4 or~~
17 ~~7260 may occur only if authorized by a site-specific permit issued~~
18 ~~by the department. The department shall approve a permit only if~~
19 ~~it finds that the dredging operation will not be deleterious to wild~~
20 ~~trout and steelhead stocks, or to other native aquatic or amphibian~~
21 ~~species known to exist in the designated waters, that are listed~~
22 ~~under state or federal law as threatened or endangered or have~~
23 ~~been identified by the department as a species of special concern.~~
24 ~~Notwithstanding Section 5653, the department may establish a~~
25 ~~separate permit fee to reimburse the department for the costs of~~
26 ~~administering this subdivision that would be sufficient to cover~~
27 ~~the costs directly associated with administering the site-specific~~
28 ~~permits authorized by this subdivision, but which may not be used~~
29 ~~to cover the department's costs to comply with the court ordered~~
30 ~~environmental review in the case of Karuk Tribe of California et~~
31 ~~al. v. California Department of Fish and Game, Super. Ct. Alameda~~
32 ~~County Case No. RG 05 211597.~~

33 ~~(b) Notwithstanding Section 5653.9, if the department~~
34 ~~determines that it is necessary to protect native aquatic, fish, or~~
35 ~~amphibian species listed by the commission pursuant to Section~~
36 ~~2070 or species identified by the department as species of special~~
37 ~~concern, the department may seasonally restrict, limit the size or~~
38 ~~use of equipment, or close areas that were otherwise opened for~~
39 ~~dredging and for which permits were issued pursuant to Section~~
40 ~~5653. That action is deemed a project within the class of projects~~

~~designated pursuant to Section 21084 of the Public Resources Code described in Section 15307 of Title 14 of the California Code of Regulations.~~

5653.7. (a) *In the event of an unanticipated water level change, if the department determines that it is necessary to protect fish and wildlife resources, the department may close areas that were otherwise opened for dredging and for which permits were issued pursuant to Section 5653.*

(b) *In addition to those Wild and Heritage Trout waters designated pursuant to Section 1726.4 or 7260 where motorized suction dredging is not permitted at any time by Section 228.5 of Title 14 of the California Code of Regulations, motorized suction dredging shall not occur within the following stream and river segments and lakes:*

(1) *Bear Creek, from Bear Valley Dam (impounding Big Bear Lake) downstream to the confluence with the Santa Ana River (San Bernardino County).*

(2) *Clavey River, upstream from the confluence with the Tuolumne River, excluding tributaries (Tuolumne County).*

(3) *Fall River, from Pit No. 1 Powerhouse intake upstream to its origin at Thousand Springs including Spring Creek, but excluding all other tributaries (Shasta County).*

(4) *Feather River, Middle Fork, from Oroville Reservoir upstream to the Sloat vehicle bridge, excluding tributaries (Butte and Plumas Counties).*

(5) *Hat Creek, from Lake Britton upstream to Hat No. 2 Powerhouse (Shasta County).*

(6) *Kings River, from Pine Flat Lake upstream to the confluence with the South and Middle Forks excluding tributaries; South Fork from the confluence with the Middle Fork upstream to the western boundary of Kings Canyon National Park excluding tributaries (Fresno County).*

(7) *Lavezolla Creek (Sierra County).*

(8) *Merced River, from Yosemite National Park boundary downstream to the Foresta Bridge; South Fork from the confluence with the mainstem upstream to the western boundary of Yosemite National Park, excluding tributaries (Mariposa County).*

(9) *Nelson Creek, upstream from the confluence with the Middle Fork Feather River excluding tributaries (Plumas County).*

1 (10) North Fork American River, from the Iowa Hill Bridge to
2 the confluence with Lake Clementine (Placer County).

3 (11) Rubicon River, from the confluence with the Middle Fork
4 American River upstream to Hell Hole Dam excluding tributaries
5 (Placer County).

6 (12) Stanislaus River, Middle Fork from Beardsley Afterbay
7 Dam to the Sand Bar Diversion Dam (Tuolumne County).

8 (13) Truckee River, from the confluence with Trout Creek
9 downstream (excluding the property owned by the San Francisco
10 Fly Casters Club) to the confluence with Gray Creek (Nevada
11 County).

12 (14) Upper Truckee River, including tributaries, upstream from
13 the confluence with Showers Lake (El Dorado and Alpine
14 Counties).

15 (15) Yellow Creek, from Big Springs downstream to the
16 confluence with the North Fork of the Feather River (Plumas
17 County).

18 (c) The Legislature finds and declares that the amendments to
19 this section made during the 2007–08 Regular Session apply solely
20 to suction dredging activities conducted for instream goldmining
21 purposes. This section does not expand or provide new authority
22 for the department to close or regulate dredging conducted for
23 flood control or navigational purposes governed by other state or
24 federal law.

25 (d) This section does not prohibit or restrict nonmotorized
26 recreational mining activities, such as gold panning.

27 (e) This section shall remain in effect only until January 1, 2014
28 2011, and as of that date is repealed, unless a later enacted statute,
29 that is enacted before January 1, 2014 2011, deletes or extends
30 that date.

31 ~~SEC. 3.~~

32 SEC. 4. Section 5653.7 is added to the Fish and Game Code,
33 to read:

34 5653.7. (a) In the event of an unanticipated water level change,
35 if the department determines that it is necessary to protect fish and
36 wildlife resources, the department may close areas that were
37 otherwise opened for dredging and for which permits were issued
38 pursuant to Section 5653.

39 (b) This section shall become operative on January 1, 2014
40 2011.

1 *SEC. 5. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

O